



FIFTH ITEM ON THE AGENDA

**Developments concerning the question  
of the observance by the Government  
of Myanmar of the Forced Labour  
Convention, 1930 (No. 29)**

**Report of the Director-General**

**I. Background to the present report**

1. In the conclusions adopted following the discussion at its special sitting in June 2004, the Committee on the Application of Standards of the International Labour Conference noted, inter alia, that “the Governing Body at its next session should be ready to draw the appropriate conclusions, including reactivation and review of the measures and action taken including those regarding foreign direct investment, called for in the resolution of the International Labour Conference of 2000, unless there was a clear change in the situation in the meantime”.
2. The following report is aimed at assisting the Governing Body to review the situation in the light of all relevant developments since the measures were first activated at the end of 2000, and draw the appropriate conclusions.

**II. Brief history of developments**

**Developments leading up to the 2000 resolution  
of the International Labour Conference**

3. Following a complaint in June 1996 under article 26 of the Constitution, a Commission of Inquiry was established in 1997 to examine the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29). The authorities did not permit the Commission of Inquiry to visit Myanmar, and the Commission therefore had to take testimony in neighbouring countries from refugees and others who had recently left Myanmar. In its report issued in July 1998, the Commission of Inquiry found that the Convention had been violated in law, as well as in actual practice in a widespread and systematic manner. It recommended that the relevant legislative texts be brought into line with the Convention, that in actual practice no more forced labour be imposed by the

authorities, in particular the military, and that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced labour be strictly enforced.

4. The main response of the Government limited itself to issuing an order (Order 1/99 of May 1999) temporarily suspending the power to requisition labour under the Village and Towns Acts. This was however only a partial measure and without real effect. In view of the Government's failure to take the necessary action to implement the recommendations of the Commission of Inquiry, the International Labour Conference adopted at its 87th Session (June 1999) a resolution on the widespread use of forced labour in Myanmar.<sup>1</sup> Subsequently, at its 88th Session (June 2000) the International Labour Conference adopted a resolution under article 33 of the Constitution on measures to secure the compliance of Myanmar with the recommendations of the Commission of Inquiry. This resolution approved the following measures, which took effect on 30 November 2000:
- (a) to decide that the question of the implementation of the Commission of Inquiry's recommendations and of the application of Convention No. 29 by Myanmar should be discussed at future sessions of the International Labour Conference, at a sitting of the Committee on the Application of Standards specially set aside for the purpose, so long as this Member has not been shown to have fulfilled its obligations;
  - (b) to recommend to the Organization's constituents as a whole – governments, employers and workers – that they: (i) review, in the light of the conclusions of the Commission of Inquiry, the relations that they may have with the member State concerned and take appropriate measures to ensure that the said Member cannot take advantage of such relations to perpetuate or extend the system of forced or compulsory labour referred to by the Commission of Inquiry, and to contribute as far as possible to the implementation of its recommendations; and (ii) report back in due course and at appropriate intervals to the Governing Body;
  - (c) as regards international organizations, to invite the Director-General: (i) to inform the international organizations referred to in article 12, paragraph 1, of the Constitution of the Member's failure to comply; (ii) to call on the relevant bodies of these organizations to reconsider, within their terms of reference and in the light of the conclusions of the Commission of Inquiry, any cooperation they may be engaged in with the Member concerned and, if appropriate, to cease as soon as possible any activity that could have the effect of directly or indirectly abetting the practice of forced or compulsory labour;
  - (d) regarding the United Nations specifically, to invite the Director-General to request the Economic and Social Council (ECOSOC) to place an item on the agenda of its July 2001 session concerning the failure of Myanmar to implement the recommendations contained in the report of the Commission of Inquiry and seeking the adoption of recommendations directed by ECOSOC or by the General Assembly, or by both, to governments and to other specialized agencies and including requests similar to those proposed in paragraphs (b) and (c) above;

<sup>1</sup> This resolution, inter alia, prevented the Government of Myanmar from receiving any technical cooperation or assistance from the ILO, other than direct assistance to implement immediately the recommendations of the Commission of Inquiry, or receiving any invitation to attend meetings, symposia and seminars organized by the ILO, except such meetings that have the sole purpose of securing immediate and full compliance with the said recommendations, until such time as it had implemented the recommendations of the Commission of Inquiry. The only meetings the Government is invited to are the International Labour Conference and the specific sessions of the Governing Body where the issue of Myanmar is discussed.

- (e) to invite the Director-General to submit to the Governing Body, in the appropriate manner and at suitable intervals, a periodic report on the outcome of the measures set out in paragraphs (c) and (d) above, and to inform the international organizations concerned of any developments in the implementation by Myanmar of the recommendations of the Commission of Inquiry.
5. In parallel to these developments, there had been an exchange of correspondence between the Director-General and the Myanmar authorities,<sup>2</sup> which led to two ILO technical cooperation missions visiting Yangon, in May and October 2000, to provide assistance to the authorities for the immediate implementation of the recommendations of the Commission of Inquiry.<sup>3</sup> These missions resulted in the adoption of an additional order supplementing Order 1/99, which prohibited forced labour in more clear terms, covering all authorities including the army.

### Developments following the adoption of the 2000 resolution

6. In accordance with the 2000 resolution, the Director-General wrote to member States in December 2000, and through them to employers' and workers' organizations, bringing their attention to the relevant paragraph of the resolution and requesting that they inform him of any action taken or envisaged in this regard. In accordance with the resolution, the Director-General also wrote to international organizations, as well as setting in motion the procedures necessary to have the matter placed on the agenda of the July 2001 session of the United Nations Economic and Social Council (ECOSOC).
7. The initial responses received by the Director-General were summarized in an interim report to the March 2001 session of the Governing Body.<sup>4</sup> The replies from the Organization's constituents indicated that in general they had adopted what was then described as a "wait-and-see" approach, in the light of the ongoing dialogue which was taking place between the ILO and the Myanmar authorities and which seemed to have the potential of achieving positive results. This approach appeared to receive some additional justification when agreement was reached on the visit to Myanmar in September and October 2001 of a High-level Team (HLT) appointed by the ILO to assess in full independence and freedom of movement the realities of the forced labour situation. This in turn led to the appointment of an ILO Liaison Officer in Myanmar in May 2002, and in May 2003 to agreement on a joint Plan of Action to address forced labour, including in particular the establishment of a Facilitator mechanism to address specific complaints regarding forced labour. Both of these steps were key recommendations of the HLT.
8. However, the momentum in the process of dialogue and cooperation slowed in part due to uncertainties following the crackdown on the National League for Democracy (NLD) around the time of the completion of the draft Plan. It did not prove possible to go ahead with the implementation of the joint Plan of Action, and there were increasingly calls to return to the application of the measures adopted under the 2000 resolution.<sup>5</sup> The hopes of

<sup>2</sup> See ILC, 88th Session, 2000, *Provisional Record* No. 4, Annex II.

<sup>3</sup> For the reports of these missions, see ILC, 88th Session, 2000, *Provisional Record* No. 8 and GB.279/6/1 (November 2000).

<sup>4</sup> GB.280/6 (March 2001).

<sup>5</sup> These calls were made in the debates in the Governing Body at its 286th Session (March 2003), 288th Session (November 2003) and 289th Session (March 2004), and were reflected in the

proceeding with the Plan were further damaged in March 2004 by the discovery of a court case in which three people were convicted of high treason including on the basis of contacts and cooperation with the ILO.

9. The fact that no formal request has been made for updated information on action taken under the 2000 resolution does not, however, mean that no further action was taken directly or indirectly on the basis of this resolution. It is difficult to have a comprehensive picture of developments, but the Office is aware of some subsequent actions, a number of which have been widely publicized. *United States*:<sup>6</sup> In addition to sanctions already imposed on Myanmar in recent years, on 28 July 2003 the United States Congress enacted the “Burmese Freedom and Democracy Act”. Section 2 on findings specifically cites the Director-General’s call for all ILO constituents to review their relations with the regime to ensure they do not directly or indirectly contribute to forced labour.<sup>7</sup> *European Union*: Since 1997, the Council of the EU has been denying Myanmar access to generalized tariff preferences since it has not been proven that the practice of forced labour has been brought to an end. It has also renewed, on a biannual basis, its Common Position on Myanmar first adopted in 1996 in which it deplores the practice of forced labour. The European Parliament also adopted several resolutions condemning, inter alia, the use of forced labour, the latest dated 16 September 2004. *International organizations*: As regards international organizations other than the EU, the main developments relate to ECOSOC<sup>8</sup> and the OECD.<sup>9</sup> *Non-state entities* : It is more difficult to assess action taken by non-state entities and as regards disinvestment. The Office has however collected some information in this regard. International and national workers’ organizations, together with NGOs and

conclusions adopted at those sessions. Similar calls were also made in the Committee on the Application of Standards at the 92nd Session (June 2004) of the International Labour Conference.

<sup>6</sup> Some other member States are known to have taken measures against Myanmar, but the ILO is not aware of a link with the 2000 resolution.

<sup>7</sup> The Act provides, inter alia, for a one-year ban on imports from Myanmar (section 3). It also contains a reporting obligation on trade sanctions covering bilateral and multilateral measures undertaken by the United States and other governments and the extent to which they were effective in improving conditions in the country. On 10 July 2004, the import restrictions were renewed for an additional year. The US House of Representatives and Senate subsequently adopted, on 13 and 21 September respectively, a joint bipartisan resolution urging the United Nations Security Council to take action on the situation in Myanmar. The House of Representatives resolution explicitly refers to the use of forced labour. See also, as regards the impact of the Act, “Developments in Burma” (House of Representatives, Committee on International Relations, Joint Hearings, 25 March 2004, Serial No. 108-123).

<sup>8</sup> After consideration of an item entitled: “Measures to be taken for the implementation by Myanmar of the recommendations of the ILO Commission of Inquiry on forced labour”, ECOSOC adopted without discussion on 25 July 2001 a resolution (2001/20) in this regard. In its resolution, ECOSOC took note of the ILC 2000 resolution as well as the developments which took place in 2001 within the ILC. ECOSOC also requested the Secretary-General to keep it informed of further developments. At its following substantive session in October 2002, ECOSOC was orally informed of developments and since then, no further discussion has taken place.

<sup>9</sup> In 2001 the OECD’s Trade Union Advisory Committee raised the issue of forced labour in Myanmar and tabled a letter which noted the adoption of the ILC 2000 resolution and asked the Committee on International Investment and Multinational Enterprises to explain the OECD guidelines and discuss how they could be used to contribute to the elimination of forced labour in Myanmar. The response from the Committee indicated that primary responsibility was accorded to national contact points in addressing such inquiries. Subsequently, a number of national contact points took multinational activity in Myanmar into consideration and some issued recommendations to companies in this regard (see OECD Guidelines for Multinational Enterprises: 2002 report by the chair of the annual meeting of the National Contact Points).

networks, have been organizing boycott and disinvestment campaigns targeting companies doing business in Myanmar, using in particular the ILC 2000 resolution. This has undoubtedly had an impact on the climate for foreign investment in Myanmar, and a number of companies have withdrawn from the country as a result of these campaigns.

### **III. Overview of the current situation**

#### **Developments in the high treason case**

10. As regards the first concern expressed by the Governing Body in its March conclusions, the new judgement makes clear that contacts with the ILO as an international organization of which Myanmar is a Member are legal. As pointed out to the Minister for Labour by the Office as soon as the first judgement came to the Director-General's attention, such clarification was essential from the viewpoint of the continued presence of the ILO in the country. It should be noted, however, that despite the recommendation of the informal facilitator for the release of the three individuals, the conviction of the three individuals has been maintained on grounds that seem to have shifted, and they have to serve a (reduced) prison sentence. The second concern of the Governing Body, relating to freedom of association ramifications, is unfortunately not remedied by the new judgement.

#### **Situation in actual practice**

11. The situation of forced labour in Myanmar, as described in detail in the recent reports of the Liaison Officer a.i., remains of grave concern. While there is general agreement that some improvements in the situation have occurred in central parts of Myanmar, forced labour continues to be imposed in all the various forms identified by the Commission of Inquiry, in particular in remote areas under the authority of the army, of which the Liaison Officer a.i. had first-hand evidence.

#### **Situation in law**

12. It seems clear that whatever the deficiencies of the Orders prohibiting forced labour, the problem of the continued prevalence of forced labour is not due to the form and content of these Orders. Nor is the problem primarily related to lack of knowledge of the Orders, as they have been widely (if unevenly) disseminated, and the remarkable fact is that the population seems more and more ready to use this legal remedy. Rather, the problem is one of effectively implementing the prohibition contained in the Orders. So far, no one has been punished under section 374 of the Penal Code for imposing forced labour. Recent disturbing developments indicate that, on the contrary, people can be punished as a result of lodging complaints regarding forced labour. This tends to give further support to the HLT's findings concerning the existing legal avenues and the need to look for alternative channels such as the Facilitator.

#### **Follow-up to allegations**

13. The recent experience of the Liaison Officer a.i. has shown that specific complaints of forced labour brought to the attention of the Convention 29 Implementation Committee are systematically denied, and cases brought directly before the courts are rejected. The picture which emerges is of a response by the authorities to complaints of forced labour that is lacking in credibility. This is all the more concerning given the types of cases involved.

While a number of the allegations which have been raised with the authorities are extremely serious cases involving the army in often remote areas, others relate to comparatively minor cases of forced labour imposed by local officials in central Myanmar. Action on these latter cases should be more straightforward because of both the location and nature of the offences involved. The fact that the authorities have not taken steps to deal with these latter cases must raise serious doubts as to the possibility of making significant progress in those areas under the control of the army, where all the indications are that the forced labour situation is far more serious in both form and extent. Two of the cases reported by the Liaison Officer a.i. shed a particularly clear light on this situation.

14. The first case concerns the situation in Hinthada township.<sup>10</sup> This case involved three separate complaints from individuals to the court under section 374 of the Penal Code, all concerning the same incident of forced labour. The township in question is close to Yangon, and the incident appears at first sight to have involved a relatively minor case of forced labour imposed by local officials.<sup>11</sup> This case should therefore have been relatively straightforward to resolve. The reason that the case is such a serious one is due to the failure of the authorities to deal in a credible way with the complaint. This has resulted in a situation where not only were two individuals imprisoned for refusing to perform forced labour, but when this situation came to light through a subsequent complaint to the court on their part, the court failed to respond credibly to the complaint,<sup>12</sup> and furthermore found the two persons guilty of defamation and imprisoned them for a second time (although they have now been released).
15. The second case concerns an incident of forced labour in Toungup township, a remote part of the country.<sup>13</sup> This is an extremely important case, as it contains a number of elements which highlight both the serious nature of the forced labour problem, and the difficult steps needed to effectively address this problem. First, the work was required for an economic project (a land reclamation scheme) initiated by the army, and the orders to requisition villagers came from the army. Second, the case is serious because of the large numbers of villagers involved and the harsh conditions under which they were forced to work, and because of the harassment subsequently faced by the complainants. Third, a joint visit to the region by the Liaison Officer a.i. and the informal facilitator was able to confirm the essential facts of the situation. Solving cases such as this requires a capacity and willingness on the part of the central authorities to enforce the law with respect to the army. The attitude that they will adopt in this case will be a significant test of their continued commitment.

#### **IV. Options available to the Governing Body**

16. The framework given by the Committee on the Application of Standards<sup>14</sup> was mainly concerned with the high treason case, on which there have been important developments.

<sup>10</sup> See GB.291/5/1, paras. 16 and 20.

<sup>11</sup> That is, sentry duty at an (unoccupied) monastery.

<sup>12</sup> The complainants subsequently tried to lodge the case with a higher court, without success.

<sup>13</sup> The case in question involved the requisitioning of several hundred villagers by the village-level authorities, under orders from the army. These villagers, including old women, had to work for several days at a time under very harsh conditions in a mangrove swamp, building an earth dam as part of an army land-reclamation project. See GB.291/5/1, paras. 18-20.

<sup>14</sup> See paragraph 1 above.

However, there is a widespread feeling, strengthened by the situation described above, that it is difficult to maintain a “wait-and-see” approach. It seems therefore appropriate to place the problem in a broader perspective. This requires assessing recent developments in the light of the assumptions which the Governing Body has consistently been guided by, which are based on the HLT’s analysis of the situation and whose continued relevance is confirmed by the above developments.

17. As the HLT noted, forced labour is deeply rooted in the historical, political and military situation of the country. The fact that Myanmar has a large army which adopts a self-reliance strategy for its forces in the field is a major current obstacle to the elimination of the practice. Nevertheless, the HLT was of the opinion that forced labour could be eliminated if there was a real commitment from the authorities to do so, and that this in turn could bring about a change in the attitude of the international community. The HLT felt that this commitment could in particular express itself through the various steps which it recommended, that is, a permanent presence of the ILO and a form of Ombudsman mechanism to help overcome the lack of institutional remedies for victims, one of the main obstacles that the HLT identified.
18. Indeed, the fact that agreement was reached on the appointment of a Liaison Officer in Myanmar as well as on the Facilitator mechanism was an indication of a certain commitment by the authorities. The question which must now be asked, taking in particular into account the treatment of allegations, is whether this commitment continues. Some relevant indications were also given by the Minister for Home Affairs when he stated in a meeting with the informal facilitator in September that instructions had recently been given to the regional commanders by the senior leadership, including Senior General Than Shwe himself, to stop using forced labour. It remains to be seen, however, what could be the impact of the recent leadership changes in relation to the commitment of the authorities on the forced labour issue. If there is a continued commitment on the part of the authorities to eliminating forced labour, then the lack of progress on individual cases must in any case raise doubts about the institutional ability to implement such a commitment, in particular vis-à-vis the army. An important test in this regard will be the action taken with respect to the Toungup case. This case reinforces the need for a renewed examination of the root causes of the problem and of the role of the army.
19. The seriousness of the current situation as reflected in the report of the Liaison Officer a.i. cannot be in any doubt. The question before the Governing Body is what type of action is best suited to bringing a verifiable improvement in that situation. It seems useful to review as objectively as possible the various options that one may think of, it being understood that they may be mutually exclusive.
20. One option would be to now move ahead with the implementation of the Plan of Action. There was a general feeling before the high treason case came to light, in the more positive general context which prevailed at the beginning of the year, that it would be useful and desirable to go ahead with the Plan. This would certainly not have been possible without clarity being brought to the question of the legality of contacts with the ILO. It could now be argued that the positive developments in the high treason case in this regard have removed the main obstacle to the implementation of the Plan of Action. Indeed, it is very clear with regard to the main element of the Plan, the Facilitator, that there is a real demand for such a mechanism among the population in all parts of the country. It is also clear that the ILO’s concern that there be appropriate guarantees protecting complainants from retaliation was also valid. The fact that there have been cases of retaliation against people who complained to the Liaison Officer a.i., and that there have been no credible outcomes when victims have complained directly to the courts, demonstrates the need for the kind of institutional guarantees that the Facilitator mechanism contains. The recent case in Toungup in which the informal facilitator generously accepted to be involved,

demonstrated very clearly both the great potential value of the mechanism, but also its limitations. While the Facilitator mechanism is vital in giving an avenue of legal remedy for victims, with appropriate guarantees, it cannot directly address the root causes of the problem, in particular with regard to the army. In serious cases such as in Toungup, where an informal solution is impossible and may not in any case be appropriate, the willingness and capacity on the part of the authorities to take the necessary action, in particular as regards the army, is a sine qua non. Should this willingness be clearly confirmed, then the ILO could examine with the authorities how the Organization could help them to translate that willingness into practice and address the root causes of the problem even more directly and on a broader basis than the existing Plan of Action.

- 21.** A second option would be for the Governing Body to reactivate consideration by governments and other relevant entities of the action that they have been called upon to take under the 2000 resolution. This has been repeatedly raised in the Governing Body. The Governing Body could thus decide to instruct the Director-General to write to the constituents as a signal that they should draw the appropriate consequences of the fact that the momentum which had been gained and which justified the “wait-and-see” approach has stopped. This could take the form of a request, following up on his letter of December 2000, for details on subsequent action taken with regard to the resolution. The Director-General would report to the Governing Body on the responses received.
- 22.** One important point to consider would be the impact this move may have on the continued ILO presence and, reciprocally, what could be the impact of a continued ILO presence on the attitude of the constituents towards reactivating their consideration of the action to be taken on the basis of the resolution. The experience gained so far from this presence has been invaluable, in particular the possibility to have first-hand information on the realities of forced labour which was not previously available. It has allowed for a degree of greater mutual understanding and confidence between the ILO and the Myanmar authorities. Support for such a presence has come from many quarters, and there have also been calls to expand it. While a reactivation of the measures might not necessarily have automatic consequences for the presence, it would undoubtedly have an impact on the context in which the Liaison Officer can meaningfully discharge his functions, which presumes engagement and cooperation with the authorities. If, for instance, a situation was created where the ILO presence functioned in a way which was of more benefit to the authorities than to the victims of forced labour, this might have consequences for the possibility of continuing a meaningful presence.
- 23.** It must be recognized at the same time that important elements of information for deciding on the appropriate course of action to choose may still be missing. This relates to the continued willingness of the authorities at different levels, and particularly at the highest level, not only to maintain cooperation with the ILO, but to take the action necessary to solve the serious problems identified in this report. This is particularly relevant given the recent changes in the senior leadership of Myanmar. As indicated above, the authorities’ reaction to the Toungup case will provide an important first indication, but which may need to be complemented by a first-hand assessment at the highest level. If evidence of such a commitment is forthcoming, then discussions will be needed to identify ways to translate it into concrete steps to remedy the root causes of the forced labour problem. Again it will be crucial to assess from the highest levels of authority, particularly the army, their readiness and determination to take these steps.

Geneva, 3 November 2004.